



Brian Richardson appeals his sentence for battery causing serious bodily injury, a Class C felony.<sup>1</sup> Finding his sentence is not inappropriate, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

On April 27, 2006, Brian and his wife, Jessica, went out for dinner and drinks. They quarreled throughout the course of the evening and went home separately. When Brian arrived home, he found Jessica in the living room and told her he was through with the marriage and was taking the children. As he turned toward their daughter's bedroom, Jessica grabbed the back of his shirt. Brian hit Jessica and broke her nose and some of her facial bones.

Brian was charged with domestic battery, a Class A misdemeanor, and battery causing serious bodily injury. A jury found him guilty on both counts. The court entered a conviction only of the Class C felony. He received a sentence of four years, which is the advisory sentence for a Class C felony.<sup>2</sup> Ind. Code § 35-50-2-6.

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<sup>1</sup> Ind. Code § 35-42-2-1(a)(3).

<sup>2</sup> The trial court's statement at the sentencing hearing appears to contemplate future orders for restitution to Jessica:

Should there be a change in the situation regarding the victim's medical expenses, State, you should submit that . . . in writing. [Jessica's medical expenses up to the time of the sentencing hearing were covered by the Emergency Victim's Assistance Program at Wishard Hospital.] The Court is obviously, going to be concerned if, at some point down the road she starts receiving bills for medical care as a result of this offense. If that should happen, any of those bills will be ordered paid by the defendant. Now, as far as whether Wishard or whether it was Violent Crime Compensation that also took hold and paid some of this, they also would have the right to go after the defendant for reimbursement, but I'll leave that issue separate. What I'm most concerned with and what I think I have the most authority to do, is to order that anything out of pocket that Jessica might be subjected to would be paid by the defendant.

The trial court found as a mitigating factor that Brian had no previous convictions. As aggravating factors, the trial court found a high risk Brian would commit another domestic violence offense, Brian's lack of sincere remorse, and the nature and circumstances of the offense.

### **DISCUSSION AND DECISION**

We may revise a sentence if it is “inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). We give deference to the trial court's decision, recognizing the special expertise of the trial court in making sentencing decisions. *Barber v. State*, 863 N.E.2d 1199, 1208 (Ind. Ct. App. 2007), *trans. denied* \_\_ N.E.2d \_\_ (Ind. 2007). Although we conduct an independent review under App. R. 7(B), we “assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed here was inappropriate.” *Gibson v. State*, 856 N.E.2d 142, 147 (Ind. Ct. App. 2007). The defendant bears the burden of persuading us the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

The trial court found the nature and circumstances of the offense were aggravating factors. Specifically, the court noted the offense occurred at home with children present. Jessica testified one of the children saw her bleeding from her injuries. Furthermore, the court found Brian continued to taunt Jessica through violent stories he posted on his My

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(Tr. at 370.) It is not apparent from the record that the trial court has ordered Brian to pay any medical expenses. Any such order would be limited to expenses occurred before the sentencing hearing. Ind. Code § 35-50-5-3(a); *Kotsopoulos v. State*, 654 N.E.2d 44, 46 (Ind. Ct. App. 1995).

Space page.<sup>3</sup> We will defer to the court's findings, and we conclude the nature of the offense does not weigh in favor of revising his sentence.

Several of the trial court's findings are relevant to Brian's character. During the sentencing hearing, Brian claimed he loved Jessica and wished to apologize to her, but could not because of a no-contact order. However, he did not apologize during his statement. Rather, he focused on justifying his My Space entries. These facts support the finding Brian did not express genuine remorse. Although Brian claims the court was penalizing him for maintaining his innocence throughout the trial, the court specifically referred to his statement during the sentencing hearing.

The court also found Brian was at high risk to commit another domestic violence offense. His lack of remorse and obsession with violence, as demonstrated by his My Space postings, support the court's finding. In addition, Jessica testified, "[H]e told me that if I ever f\*\*\*\*\* up his life, he'd kill me." (Tr. at 342.) As the trial court was in a better position to evaluate Brian's demeanor, attitude, and propensity to commit further offenses, we defer to its findings.

A few facts reflect more favorably on Brian's character. He has no previous convictions and has been contributing to the support of his family. Nevertheless, Jessica testified her parents were also helping to support them and would continue to do so. Brian bears the burden of persuading us his sentence is inappropriate, and he has not

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<sup>3</sup> Brian claims these stories are purely fictional and should have no bearing on his sentence. However, the stories bore some semblance to the events between Jessica and Brian. From Jessica's testimony, the trial court could fairly infer Brian was using these stories to intimidate Jessica and intensified these efforts after he learned she was reading the material.

demonstrated his support was a substantial portion of the family's total support. Viewing the nature of his offense and his character as a whole, we do not find the advisory sentence inappropriate.

The judgment of the trial court is affirmed.

DARDEN, J., and CRONE, J., concur.